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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9 CHARLES THOMAS CLAGETT, III,
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11 Petitioner,
12 v.
13 UNITED STATES OF AMERICA,
14 Respondent.

Case No. C17-111RSL

ORDER DENYING MOTION TO
VACATE, SET ASIDE, OR
CORRECT SENTENCE UNDER
28 U.S.C. § 2255

15 This matter comes before the Court on petitioner Charles Thomas Clagett, III's motion
16 under 28 U.S.C. § 2255 to vacate, set aside, or correct his sentence. Dkt. # 1. The Court has
17 considered the parties' memoranda, the exhibits, and the remainder of the record. For the
18 reasons set forth below, the motion is DENIED.

19 **I. BACKGROUND**

20 In September 1997, a jury convicted petitioner of two counts of armed bank robbery (in
21 violation of 18 U.S.C. §§ 2113(a) and (d)) and two counts of use of a firearm during and in
22 relation to a crime of violence (18 U.S.C. § 924(c)(1)).¹ Case No. CR97-265RSL, Dkt. # 63. The
23 Honorable Barbara Jacobs Rothstein, United States District Judge, sentenced petitioner to 370
24 months in custody, including a 300-month mandatory consecutive sentence for use of a firearm
25 during a crime of violence. Section 924(c)(3) defines a crime of violence as:

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28 ¹ Petitioner's trial was held before the Honorable Thomas S. Zilly, he was sentenced by the Honorable
Barbara Jacobs Rothstein, and his case was later reassigned to this Court.

1 [A]n offense that is a felony and (A) has as an element the use, attempted use, or
2 threatened use of physical force against the person or property of another, or (B)
3 that by its nature, involves a substantial risk that physical force against the person
or property of another may be used in the course of committing the offense.²

4 Clause (A) of this definition is known as the “force clause,” while clause (B) is known as the
5 “residual clause.” United States v. Watson, 881 F.3d 782, 784 (9th Cir. 2018). At sentencing, the
6 Court did not specify if it found petitioner’s armed bank robbery conviction to qualify as a crime
7 of violence under § 924(c)’s force clause, residual clause, or both. See Dkts. ## 5-1, 5-2.

8 On direct appeal, the Ninth Circuit affirmed petitioner’s conviction and sentence in an
9 unpublished memorandum disposition. United States v. Clagett, No. 98-30161, 1999 WL
10 754406 (9th Cir. Sep. 23, 1999). In October 2000, petitioner filed a motion to vacate his
11 conviction and sentence under 28 U.S.C. § 2255, on grounds unrelated to those raised here. Case
12 No. CV00-1816RSM, Dkt. # 1. The Court denied petitioner’s § 2255 motion. Id., Dkt. # 40.

13 Since then, the Supreme Court has handed down multiple decisions that bear on
14 § 924(c)’s definition of a crime of violence. See Johnson v. United States (Johnson I), 559 U.S.
15 133, 140 (2010) (construing the force clause of the Armed Career Criminal Act (ACCA));
16 United States v. Gutierrez, 876 F.3d 1254, 1256 (9th Cir. 2017) (per curiam) (Johnson I standard
17 applies to § 924(c)(3)’s similarly worded force clause). Most notably, on June 26, 2015, the
18 Supreme Court invalidated as unconstitutionally vague the residual clause of the ACCA.
19 Johnson v. United States (Johnson II), 135 S. Ct. 2551, 2557 (2015). That clause defined a
20 “violent felony” as a felony “that . . . involves conduct that presents a serious potential risk of
21 physical injury to another.” Id. § 924(e)(2)(B). On April 18, 2016, the Supreme Court declared
22 this holding retroactive in cases on collateral review. Welch v. United States, 136 S. Ct. 1257,
23 1268 (2016).

24 Petitioner filed the instant § 2255 motion on May 23, 2016. He argues that under
25 Johnson II and Welch, § 924(c)(3)’s residual clause is void for vagueness. As a result, petitioner
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27 ² The language of § 924(c)(3) was the same when petitioner was sentenced. See 18 U.S.C. § 924(c)(3)
28 (1996).

1 asserts, the predicate offense of armed bank robbery no longer qualifies as a crime of violence
2 for purposes of § 924(c), and his conviction and sentence under § 924(c)(1) cannot stand.³

3 II. DISCUSSION

4 If armed bank robbery is a crime of violence within the meaning of § 924(c)'s force
5 clause, then any Johnson II error is harmless, and petitioner is not entitled to relief. To decide
6 whether petitioner's conviction is a crime of violence under the force clause, we look to the
7 substantive law on § 924(c)(3)(A) as it currently stands. United States v. Geozos, 870 F.3d 890,
8 897 (9th Cir. 2017).

9 Petitioner's motion fails under the Ninth Circuit's decision in Watson, 881 F.3d at 786,
10 which reiterated longstanding circuit precedent that declares armed bank robbery a crime of
11 violence under § 924(c)'s force clause. See also United States v. Wright, 215 F.3d 1020, 1028
12 (9th Cir. 2000). Like petitioner, the Watson petitioners argued that their § 924(c) convictions
13 were unlawful because the predicate offense—armed bank robbery (18 U.S.C. § 2113)—did not
14 qualify as a crime of violence under either the force or residual clauses after Johnson I and
15 Johnson II. The court rejected that argument, without reaching the residual clause's
16 constitutionality. Even the least violent form of bank robbery—bank robbery by intimidation—
17 “requires at least an implicit threat to use the type of violent physical force necessary to meet the
18 Johnson [I] standard.” Watson, 881 F.3d at 785 (quoting Gutierrez, 876 F.3d at 1257). Bank
19 robbery by intimidation also meets the mens rea requirement for a crime of violence. Id.
20 Accordingly, bank robbery under § 2113(a) categorically qualifies as a crime of violence for
21 purposes of § 924(c). Because an armed bank robbery conviction under §§ 2113(a) and (d)
22 “cannot be based on conduct that involves less force than an unarmed bank robbery requires,”
23 armed bank robbery also constitutes a crime of violence under § 924(c). Id. at 786.

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26 ³ On May 7, 2018, petitioner filed an additional memorandum in support of his § 2255 motion, arguing
27 that the Supreme Court's decision in Sessions v. Dimaya, 138 S. Ct. 1204 (2018), compels the Court to
28 vacate his conviction and sentence under § 924(c)(1). Dkt. # 9. The Court has considered petitioner's
memorandum, and finds that Dimaya has no bearing on the conclusions set forth below.

Watson resolves petitioner's motion.⁴ Petitioner's conviction for armed bank robbery is a proper basis for his conviction and sentence under § 924(c).

III. CONCLUSION

For the foregoing reasons, the Court finds that petitioner has not demonstrated that his sentence should be vacated, set aside, or corrected. His petition, Dkt. # 1, is accordingly DENIED. The Court further finds that no evidentiary hearing is required because the record conclusively shows petitioner is not entitled to relief. See 28 U.S.C. § 2255(b). Likewise, petitioner has not substantially shown a denial of constitutional rights, and the Court concludes no certificate of appealability should issue. See id. § 2253(c)(2).

For the foregoing reasons, the Court ORDERS:

- (1) Petitioner's motion, Dkt. # 1, is hereby DENIED; and
- (2) Petitioner is DENIED a certificate of appealability under 28 U.S.C. § 2253.

DATED this 22nd day of May, 2018.

Robert S. Lasnik
Robert S. Lasnik
United States District Judge

⁴ The government also argues that petitioner’s § 2255 motion is untimely and procedurally defaulted, and that it does not rely on the rule announced in Johnson II. In light of the substantive conclusions above, the Court does not reach these issues. See Franklin v. Johnson, 290 F.3d 1223, 1232 (9th Cir. 2002) (noting courts’ discretion to pretermitt complex procedural issues and “proceed to the merits if the result will be the same”).